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J. Douglas
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Gudrun Vandeginste
Serial No.: 09/543,016
Filed: April 4, 2000
For: APPARATUS FOR PROCESSING SIGNALS
Group No.: 2614
Examiner: P. M. Natnael

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MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S BRIEF UNDER 37 C.F.R. § 1.192

Sir:

This brief is in furtherance of a Notice of Appeal filed on January 13, 2004. The due date for filing the Appellant's Brief is March 13, 2004. Because March 13, 2004 is a Saturday, the time for filing the Appellant's Brief is extended to Monday, March 15, 2004.

The fees required under 37 C.F.R. § 1.17(c), and any required petition for extension of time for filing this appeal brief and fees for any such extension of time, are dealt with in the accompanying transmittal letter.

This brief is transmitted in triplicate (37 C.F.R. § 1.192(a)).

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This brief contains these items under the following headings, and in the order set forth below
(37 C.F.R. § 1.192(c)):

- I REAL PARTY IN INTEREST
- II RELATED APPEALS AND INTERFERENCES
- III STATUS OF CLAIMS
- IV STATUS OF AMENDMENTS
- V SUMMARY OF INVENTION
- VI ISSUES
- VII GROUPING OF CLAIMS
- VIII ARGUMENTS
 - A. ARGUMENTS - REJECTIONS UNDER 35 U.S.C. § 103
- IX APPENDIX OF CLAIMS INVOLVED IN THE APPEAL

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The final page of this brief before the beginning of the Appendix of Claims bears the attorney's signature.

I REAL PARTY IN INTEREST (37 C.F.R. § 1.192(c)(1))

The real party in interest in this appeal is Philips Electronics North America Corporation.

II RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 1.192(c)(2))

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal, there are not such appeals or interferences.

III STATUS OF CLAIMS (37 C.F.R. § 1.192(c)(3))

The status of the claims in this application are:

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

There are twenty (20) claims in the application (Claims 1-20).

B. STATUS OF ALL THE CLAIMS

1. Claims previously cancelled: None.
2. Claims withdrawn from consideration but not cancelled: None.
3. Claims pending: Claims 1-20.
4. Claims allowed: None.
5. Claims rejected: Claims 1-20.

C. CLAIMS ON APPEAL

The claims on appeal are Claims 1-20.

IV STATUS OF AMENDMENTS (37 C.F.R. § 1.192(c)(4))

No amendments were submitted and refused entry after issuance of the final Office Action dated October 22, 2003.

V SUMMARY OF INVENTION (37 C.F.R. § 1.192(c)(5))

The Appellant's invention comprises an apparatus and method for processing signals. In one embodiment of the invention the apparatus comprises parameter control means for controlling parameters of signals. (Specification, Page 1, Lines 2-3 and Figures 1-2). The parameter control means causes adjustments to the parameters of the signals in response to current ambient factors and properties of the signals. (Specification, Page 1, Lines 4-5 and Figures 1-2). The apparatus further comprises indicator means for presenting a level indicator that is indicative of the adjustments (Specification, Page 1, Lines 24-26 and Figures 1-2). The continuously varying adjustments of the parameter control means are visualized, giving a viewer an impression of the automatic signal control features of the apparatus and their proper functioning. (Specification, Page 1, Lines 26-28 and Figures 1-2). In another embodiment the apparatus comprises user control means for setting a preferred parameter level to be input into the parameter control means (Specification, Page 2, Lines 7-11 and Figures 1-2). The parameter control means computes adjustments to the signal parameters as a function of the preferred parameter level and current ambient factors and properties of the signals. (Specification, Page 2, Lines 9-11 and Figures 1-2).

VI ISSUES (37 C.F.R. § 1.192(c)(6))

A. Whether Claims 1-20 are unpatentable under 35 U.S.C. § 103(a) as being obvious in view of the combination of U.S. Patent No. 6,411,306 to *Miller et al.* ("Miller") and United States Patent No. 5,933,130 to *Wagner*.

VII GROUPING OF CLAIMS (37 C.F.R. § 1.192(c)(7))

Claims 1-20 were rejected under 35 U.S.C. § 103(a). For purposes of this appeal, the pending claims will be grouped together as follows:

Group A - Claim 1, Claims 3-5, Claim 9 and Claims 11-20.

Group B - Claim 2, Claims 6-8 and Claim 10.

Groups A-B stand or fall independently. Patentability of the claims within each group is argued separately below.

VIII ARGUMENTS (37 C.F.R. § 1.192(c)(8))

A. ARGUMENTS - Rejections under 35 U.S.C. § 103(a) (37 C.F.R. § 1.192(c)(8)(iv)):

Group A - Claim 1, Claims 3-5, Claim 9 and Claims 11-20.

In the October 22, 2003 Office Action the Examiner finally rejected Claims 1-20 under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 6,411,306 to *Miller et al.* ("Miller") in view of United States Patent No. 5,933,130 to *Wagner* ("Wagner"). The Examiner asserted, in essence, that most of the elements recited in Claim 1 are disclosed in the *Miller* reference

and that the *Wagner* reference discloses indicator means for presenting a level indicator that indicates the parameter adjustments made by the Appellant's invention. The Appellant respectfully traverses the Examiner's rejections based on the *Miller* reference and the *Wagner* reference.

During *ex parte* examinations of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the appellant to produce evidence of non-obviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the appellant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 USPQ 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art,

to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not be based on an appellant's disclosure. MPEP § 2142.

The Appellant respectfully submits that the Patent Office has not established a *prima facie* case of obviousness with respect to the Appellant's invention in view of the *Miller* reference and the *Wagner* reference. The Appellant notes that Claim 1 contains unique and novel limitations:

1. An apparatus for processing signals, comprising parameter control means for controlling parameters of said signals, said parameter control means being adapted to cause adjustments to said parameters in response to one of: current ambient factors and properties of said signals, wherein the apparatus further comprises indicator means for presenting a level indicator which is indicative of said adjustments. (Emphasis added).

The Appellant respectfully asserts that the unique and novel limitations of Claim 1 are not disclosed, suggested, or even hinted at in the *Miller* reference or the *Wagner* reference, or in the combination of the *Miller* reference and the *Wagner* reference.

The present invention as claimed in Claim 1 is directed to a signal processing system and method that comprises (1) parameter control means that adjusts signal parameters in response to one of: current ambient factors and the properties of the signals, and (2) indicator means for presenting a level indicator that indicates the signal parameter adjustments.

The *Miller* reference describes an apparatus that automatically adjusts the video signal parameters of “luminance” and “contrast” as a function of “ambient” and “surround” luminance. *Miller* states that “It is desirable to provide a display unit that is capable of automatically adjusting luminance and contrast without the need for operator intervention.” (*Miller*, Col. 1, Lines 14-18) (Emphasis added). That is, *Miller* provides an apparatus that automatically calculates values of luminance and contrast based on sensor readings without user input. The *Miller* apparatus is “an apparatus for automatically controlling a display luminance and contrast of a display device . . .” (*Miller*, Col. 3, Lines 9, 10) (Emphasis added).

Miller does not mention using user inputs of the type disclosed in the Appellant’s invention and has no element that is analogous to the Appellant’s user “user command unit 112.” The reason for this is that the automatic system of the *Miller* apparatus has no need of user input. In fact, the *Miller* reference teaches away from using user input. Therefore, *Miller* is not a proper reference for the proposition that it would be obvious to combine user input with the *Miller* apparatus.

The Examiner stated that “Miller et al. does not specifically disclose the indicator means for presenting a level indicator which is indicative of said adjustments.” (October 22, 2003 Office Action, Page 3, Lines 5-6). The Appellant agrees that the *Miller* reference does not disclose an indicator means as claimed. The Examiner went on to state that the *Miller* reference discloses a display device “where pop-up or pop-down type windows or GUI for parameter adjustment may be utilized, as is well-known in the art.” (October 22, 2003 Office Action, Page 3, Lines 6-8). The Examiner further stated that the *Wagner* reference discloses an anti-eye strain apparatus that

automatically adjusts the brightness of a display, comprising an auto brightness control feature within a Graphical Control Interface (GUI). The Examiner stated that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of *Miller* with the teaching of *Wagner* in order to make it easier for the viewer to control or adjust the parameters of the display according to the desired level. (October 22, 2003 Office Action, Page 3, Lines 15-18). The Appellant respectfully traverses this assertion of the Examiner.

The fact that the *Miller* reference discloses a display device that may be capable of supporting
a GUI interface does not suggest using a GUI interface for parameter adjustment in the *Miller* display device. This is especially so where, as previously described, *Miller* expressly teaches an automatic system that has no need of user input. The Appellant respectfully submits that the concept of using an indicator means such as a GUI interface in the *Miller* display device comes not from the *Miller* reference but from the Appellant's claimed invention.

Further, there is no suggestion in the *Wagner* reference to combine the GUI interface of the
Wagner device with the *Miller* device. *Wagner* recites a graphical user interface (GUI) that allows a user to manually set a "general brightness level" of images to be displayed using a sliding bar. (*Wagner*, Figure 7, Column 9, Lines 6-16). A display then adjusts the brightness level of images being presented to the user based on the general brightness level. (*Wagner*, Column 8, Lines 27-43). For example, the display may vary the brightness level of the images within a range centered at the user's general brightness level. (*Wagner*, Column 8, Lines 27-43). The user's specified brightness

level could also represent a maximum or minimum brightness level to be used. (*Wagner*, Column 8, Lines 44-58).

(3) *Wagner* never mentions that the sliding bar is used to indicate how the brightness level of an image has been altered or adjusted. For example, *Wagner* never mentions varying the brightness level of an image and then presenting the sliding bar to the user. Instead, *Wagner* simply mentions that the sliding bar allows a user to set the brightness level, and the brightness level is then used to present images to the user. The sliding bar therefore only represents the user's desired brightness level for images to be displayed. The Examiner has stated that it is well known in the art that the "sliding bar indicates the change that has been made to a parameter such as contrast or brightness levels of a display." (October 22, 2003 Office Action, Page 10, Lines 1-3). The teaching that a sliding bar always automatically reflects changes in a parameter after the parameter has been changed is not shown or suggested in the cited prior art.

In contrast, Claim 1 recites parameter control means adapted to cause adjustments to parameters of a signal and "indicator means" for "presenting a level indicator which is indicative of [the] adjustments." *Wagner* lacks any mention of an indicator identifying "adjustments" that have been made to a signal. As a result, *Wagner* fails to disclose, teach, or suggest "indicator means" for presenting a level indicator "which is indicative of [the] adjustments."

For these reasons, the proposed *Miller-Wagner* combination fails to disclose, teach, or suggest the Appellant's invention as recited in Claim 1 (and its dependent claims). The Appellant respectfully submits that Claim 1 contains limitations that are not disclosed, taught, or even

suggested in the *Miller* reference, in the *Wagner* reference, or in the combination of the *Miller* reference and the *Wagner* reference. This being the case, Claim 1 is allowable over the *Miller* reference and the *Wagner* reference, either alone or in combination. Additionally, Claims 2-4 depend from Claim 1 and contain all of the unique and novel limitations recited in Claim 1. This being the case, Claims 2-4 are patentable over the *Miller* reference and the *Wagner* reference, either alone or in combination.

Claims 7-11 directly or indirectly depend from Claim 1. Therefore, Claims 7-11 contain all of the unique and novel limitations of Claim 1. Thus, Claims 7-11 are patentable over the *Miller* reference and the *Wagner* reference, either alone or in combination.

For similar reasons, the proposed *Miller-Wagner* combination fails to disclose, teach, or suggest the Appellant's invention as recited in Claim 5 (and its dependent claims). The Appellant respectfully submits that Claim 5 contains limitations that are not disclosed, taught, or even suggested in the *Miller* reference, in the *Wagner* reference, or in the combination of the *Miller* reference and the *Wagner* reference. This being the case, Claim 5 is allowable over the *Miller* reference and the *Wagner* reference, either alone or in combination. Additionally, Claim 6 and Claims 12-20 depend directly or indirectly from Claim 5 and contain all of the unique and novel limitations recited in Claim 5. This being the case, Claim 6 and Claims 12-20 are patentable over the *Miller* reference and the *Wagner* reference, either alone or in combination.

Group B - Claim 2, Claims 6-8 and Claim 10.

The Appellant hereby incorporates by reference the arguments made above in connection with the Group A claims. The Appellant also submits the additional following arguments.

The present invention as claimed in Claim 2, Claims 7-8 and Claim 10 further comprises a “user control means” for selecting a preferred parameter level from a plurality of preferred parameter levels. Claim 6 is a method claim that comprises a step of selecting a preferred parameter level from a plurality of parameter levels.

The Appellant notes that Claim 2 contains unique and novel limitations:

2. An apparatus as claimed in claim 1, further comprising user control means for setting a preferred parameter level to be input into said parameter control means, wherein said preferred parameter level is selected by a user from a plurality of parameter levels, said parameter control means being adapted to compute said adjustments as a function of said preferred parameter level and said one of: current ambient factors and properties of said signals. (Emphasis added)

The Appellant respectfully asserts that the unique and novel limitations of Claim 2 are not disclosed, suggested, or even hinted at in the *Miller* reference or the *Wagner* reference, or in the combination of the *Miller* reference and the *Wagner* reference.

With respect to Claim 2, the *Wagner* reference does not teach, disclose or even hint at sensing and using current ambient factors to compute parameter adjustments. *Wagner* does not mention using sensors of the type disclosed in the Appellant’s invention and has no element that is analogous to the Appellant’s “sensor 113.” The reason for this is that the *Wagner* apparatus has no need of sensor input for ambient conditions. The brightness levels of *Wagner* are pre-set and no

continual measurements of ambient brightness are made. (*Wagner*, Column 7, Lines 47-54). The general level of brightness is set once (dependent upon ambient lighting) and then no further measurements of the ambient brightness levels are made. The central processing unit of *Wagner* (or the user of the *Wagner* device) may select different levels of brightness with respect to the pre-set general level of brightness. The *Wagner* device, however, unlike the Appellant's invention, does not continually sense and use current ambient factors to compute parameter adjustments. The *Wagner* device has no sensors for sensing current ambient conditions. The *Miller* device has no user control means for a user to select a preferred parameter level from a plurality of parameter levels and has no parameter control means that computes the adjustments as a function of the preferred parameter level and current ambient factors of the signals.

There is no teaching in *Wagner* to suggest combining the *Wagner* device (that requires brightness input values) with an automatically operated system such as the *Miller* device (that has no need of user input). Under the applicable patent law, there must be some teaching, suggestion or motivation to combine the *Miller* reference and the *Wagner* reference. "When a rejection depends on a combination of prior art references, there must be some teaching, or motivation to combine the references." *In re Rouffet*, 149 F.3d 1350, 1355-56, 47 USPQ2d 1453, 1456 (Fed. Cir. 1998). "It is insufficient to establish obviousness that the separate elements of an invention existed in the prior art, absent some teaching or suggestion, in the prior art, to combine the references." *Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 119 F.3d 953, 957, 43 USPQ2d 1294, 1297 (Fed. Cir. 1997). The Appellant respectfully submits that there exists no teaching, suggestion or

motivation in the prior art to combine the teachings of the *Miller* reference and the teachings of the *Wagner* reference.

The Appellant respectfully submits that the supposed advantage of providing a “user friendly approach for enabling a user to selectively set the display parameter” is an insufficient teaching or suggestion to combine the *Miller* reference and the *Wagner* reference where the *Miller* reference teaches away from the concept of using user input and the *Wagner* reference does not mention using current ambient factors.

When two references are combined the combination of the references must teach or suggest all the claim limitations. In the present case, even if the *Wagner* reference were combined with the *Miller* reference, the combination of the *Wagner* reference and the *Miller* reference would not teach, suggest or even hint at the Appellant’s invention. This is because, as previously described, the *Miller* reference does not teach, suggest, or even hint at the Appellant’s concept of using user input and the *Wagner* reference does not teach, suggest, or even hint at the Appellant’s concept of using current ambient factors.

Claim 2 claims an apparatus in which a user selects a preferred parameter level from a plurality of parameter levels. The *Miller* apparatus automatically selects only one parameter level (i.e., a default level) for luminance and contrast. There is no user input in *Miller* to select a preferred parameter level from a plurality of parameter levels. Claim 6 claims a method in which a user selects a preferred parameter level from a plurality of parameter levels.

Also, independent Claim 5 contains limitations that are analogous to the unique and novel limitations recited in Claim 1. Thus, Claim 5 is patentable over the *Miller* reference and the *Wagner* reference, either alone or in combination. Additionally, Claim 6, which depends from Claim 5, contains all of the unique and novel limitations recited in Claim 5. Thus, Claims 5-6 are both patentable over the *Miller* reference and the *Wagner* reference, either alone or in combination.

Claims 7-8 and Claim 10 directly or indirectly depend from Claim 2. Therefore, Claims 7-8 and Claim 10 contain all of the unique and novel limitations of Claim 2. Thus, Claims 7-8 and Claim 10 are patentable over the *Miller* reference and the *Wagner* reference, either alone or in combination.

The Appellant respectfully submits that Claims 1-20 are all patentable, and that the rejections of Claims 1-20 under 35 U.S.C. § 103(a) combining the *Miller* reference and the *Wagner* reference should be withdrawn. The Appellant respectfully requests that Claims 1-20 be passed to issue.

SUMMARY

The Appellant has demonstrated that the present invention as claimed is clearly distinguishable over the prior art cited of record. Therefore, the Appellant respectfully requests the Board of Patent Appeals and Interferences to reverse the final rejection of the Examiner and instruct the Examiner to issue a notice of allowance for Claims 1-20.

Respectfully submitted,

DAVIS MUNCK, P.C.

Date: March 15, 2009


William A. Munck
Registration No. 39,308

P.O. Drawer 800889
Dallas, Texas 75380
(972) 628-3600 (main number)
(972) 628-3616 (fax)
E-mail: wmunck@davismunck.com

IX APPENDIX OF CLAIMS INVOLVED IN THE APPEAL (37 C.F.R. S 1.192(c)(9))

1. An apparatus for processing signals, comprising parameter control means for controlling parameters of said signals, said parameter control means being adapted to cause adjustments to said parameters in response to one of: current ambient factors and properties of said signals, wherein the apparatus further comprises indicator means for presenting a level indicator which is indicative of said adjustments.

2. An apparatus as claimed in claim 1, further comprising user control means for setting a preferred parameter level to be input into said parameter control means, wherein said preferred parameter level is selected by a user from a plurality of parameter levels, said parameter control means being adapted to compute said adjustments as a function of said preferred parameter level and said one of: current ambient factors and properties of said signals.

3. An apparatus as claimed in claim 1, wherein said signals comprise video signals, wherein said parameters comprise picture parameters and wherein said current ambient factors comprise ambient light.

4. A television receiver comprising an apparatus as claimed in claim 1.

5. A method for processing signals, comprising a step of controlling parameters of said signals by determining adjustments in response to one of: current ambient factors and properties of said signals, wherein the method further comprises a step of presenting a level indicator which is indicative of said adjustments.

6. A method as claimed in claim 5, further comprising the steps of: selecting a preferred parameter level from a plurality of parameter levels; setting said selected preferred parameter level; and computing said adjustments as a function of said selected preferred parameter level and said one of: current ambient factors and properties of said signals.

7. An apparatus as claimed in claim 2, wherein said signals comprise video signals, wherein said parameters comprise picture parameters and wherein said current ambient factors comprise ambient light.

8. An apparatus as claimed in claim 7 wherein said picture parameters comprise one of: luminance, contrast, and brightness saturation.

9. An apparatus as claimed in claim 3 wherein said picture parameters comprise one of: luminance, contrast, and brightness saturation.

10. A television receiver comprising an apparatus as claimed in claim 2.

11. A television receiver comprising an apparatus as claimed in claim 3.

12. A method as claimed in claim 6 wherein said signals comprise video signals, wherein said parameters comprise picture parameters and wherein said current ambient factors comprise ambient light.

13. A method as claimed in claim 12 wherein said picture parameters comprise one of: luminance, contrast, and brightness saturation.

14. A method as claimed in claim 5 wherein said signals comprise video signals, wherein said parameters comprise picture parameters and wherein said current ambient factors comprise ambient light.

15. A method as claimed in claim 14 wherein said picture parameters comprise one of: luminance, contrast, and brightness saturation.

16. A method of operating a television receiver comprising a method as claimed in claim 5.

17. A method of operating a television receiver comprising a method as claimed in claim 6.

18. A method of operating a television receiver as claimed in claim 16 wherein said signals comprise video signals, wherein said parameters comprise picture parameters and wherein said current ambient factors comprise ambient light.

19. A method of operating a television receiver as claimed in claim 18 wherein said picture parameters comprise one of: luminance, contrast, and brightness saturation.

20. A method of operating a television receiver as claimed in claim 17 wherein said signals comprise video signals, wherein said parameters comprise picture parameters and wherein said current ambient factors comprise ambient light.